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4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 BRIAN JUDAH MICHALEK,

7 Plaintiff,

8 v.

9 LILLIAN POWERS KAIDE, et al.,

10 Defendants.

Case No. C19-5605-RJB-TLF

ORDER GRANTING REQUEST TO  
ADD INFORMATION TO  
COMPLAINT, GRANTING MOTION  
FOR EXTENSION TO FILE  
AMENDED COMPLAINT,  
DENYING REQUEST FOR  
COUNSEL

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12 Plaintiff is proceeding pro se and in forma pauperis in this civil rights action brought  
13 pursuant to 42 U.S.C. § 1983. By order dated August 29, 2019, this Court declined to serve  
14 plaintiff's complaint due to various deficiencies. Dkt. 14. The order directed plaintiff that he had  
15 a deadline of September 30, 2019, to either (1) file an amended complaint, or (2) show cause  
16 why the action should not be dismissed in light of the deficiencies in his complaint. *Id.* On the  
17 same day the Court issued its order, plaintiff filed additional documents entitled "motion to add  
18 information to existing 1983 federal law complaint", (Dkt. 13) a "notice of appointment of  
19 counsel", (Dkt. 15) and a "notice to add additional facts to my complaint" (Dkt. 15). On  
20 September 18, 2019, plaintiff filed a motion for extension of time to file an amended complaint  
21 indicating he required additional time to obtain copies of necessary documents. Dkt. 16.

22 Plaintiff previously requested appointment of counsel in his original complaint. That  
23 request was denied as premature by order dated August 29, 2019. Dkt. 14. Plaintiff's "notice of

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DENYING REQUEST FOR COUNSEL - 1

1 appointment of counsel” (Dkt. 15) again requests that counsel be appointed but adds no  
2 additional information explaining why appointment of counsel would be appropriate at this time.

3 Generally, a person has no right to counsel in a civil action. *See Campbell v. Burt*, 141  
4 F.3d 927, 931 (9th Cir. 1998). The Court may appoint counsel for indigent civil litigants under  
5 28 U.S.C. § 1915(e)(1), but only under “exceptional circumstances.” *Agyeman v. Corrections*  
6 *Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). When determining whether “exceptional  
7 circumstances” exist, the Court considers “the likelihood of success on the merits as well as the  
8 ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues  
9 involved.” *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

10 At this point in the case plaintiff’s complaint has not yet been served due to various  
11 deficiencies and he is in the process of amending his complaint pursuant to this Court’s order.  
12 Although the Court found plaintiff’s original complaint deficient, plaintiff’s filings thus far  
13 indicate he is capable of articulating his claims pro se. Furthermore, at this early stage of the  
14 case, the Court is unable to properly assess the likelihood of success on the merits. Accordingly,  
15 plaintiff’s request for appointment of counsel (Dkt. 15) is **DENIED** without prejudice as  
16 premature.

17 The same day this Court issued its order directing plaintiff to show cause or amend his  
18 complaint plaintiff also filed a motion seeking to add information to the existing 1983 federal  
19 law complaint (Dkt. 13). That motion (Dkt. 13) is **GRANTED**. However, having reviewed the  
20 additional information contained in that motion (Dkt. 13) as well as in plaintiff’s “notice to add  
21 additional facts” (Dkt. 15) the Court finds that they do not address or remedy several of the  
22 deficiencies addressed in its prior order directing plaintiff to show cause or file an amended  
23 complaint (Dkt. 14). Furthermore, plaintiff has indicated he intends to file an amended complaint  
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1 responding to the Court's order but seeks additional time to do so. Dkt. 16. Under the  
2 circumstances, **the Court orders as follows:** (1) plaintiff's motion requesting an extension of  
3 time to file an amended complaint (Dkt. 16) is **GRANTED;** (2) **on or before October 30, 2019,**  
4 **plaintiff is directed to file an amended complaint which addresses the deficiencies noted in**  
5 **this Court's prior order (Dkt. 14) and includes each and every claim he intends to raise in**  
6 **this § 1983 action.**

7 **Plaintiff is advised that his amended complaint will operate as a complete substitute**  
8 **for his original complaint including any supplemental submissions (Dkts. 13 and 15).**

9 Accordingly, any cause of action alleged in the original complaint and supplemental submissions  
10 that is not alleged in the amended complaint is waived. *Forsyth v. Humana, Inc.*, 114 F.3d 1467,  
11 1474 (9th Cir. 1997), *overruled in part on other grounds*, *Lacey v. Maricopa Cnty.*, 693 F.3d 896  
12 (9th Cir. 2012). Plaintiff's amended complaint must be legibly rewritten or retyped and contain  
13 the same case number.

14 Dated this 25th day of September, 2019.

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Theresa L. Fricke  
United States Magistrate Judge